

EMPLOYMENT LAW SUMMARY

New Jersey: Workers' Compensation – Employer Penalties



Because You're Different

Workers' compensation is a system of no-fault insurance that provides medical and cash benefits to employees (or their survivors) for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

In New Jersey, the Workers' Compensation Act (WCA) defines employer responsibilities and outlines the penalties employers face if they fail to comply. The New Jersey [Division of Workers' Compensation](#) (DWC), part of the New Jersey Department of Labor and Workforce Development, enforces compliance with the WCA and imposes the penalties on noncompliant employers.

FAILURE TO MAINTAIN ADEQUATE COVERAGE

Employers that do not maintain adequate coverage for their workers' compensation liability—either through an insurance policy or self-insurance—may be subject to criminal and administrative penalties.

The DWC considers an employer's workers' compensation coverage to be inadequate if the employer fails to produce proof of coverage upon request. Proof of coverage, which must indicate the effective dates of coverage, includes:

- A copy of a current certificate of insurance issued by a provider licensed in New Jersey;
- A sworn affidavit by the agent of an insurance provider stating the employer's policy number and the effective dates of coverage;
- Documents showing that an application for coverage has been filed with the New Jersey Compensation Rating and Inspection Bureau (CRIB); or
- A copy of the certificate of approval for self-insurance issued by the New Jersey Department of Banking and Insurance (DBI).

An employer that fails to obtain or maintain adequate coverage may face several penalties. These include:

- Administrative fines;
- Stop-work orders; and
- Criminal charges.

Officers of a corporation may be held personally liable for the corporation's failure to secure coverage if the officers are actively engaged in the corporate business.

ADMINISTRATIVE PENALTIES

The DWC may impose a **\$5,000** fine on employers that are uninsured or allow their coverage to lapse for up to 10 days. Additional \$5,000 fines are possible for every subsequent 10-day period an employer remains without adequate coverage. Employers may also be required to pay additional \$1,000 fines if they cannot produce sufficient proof of adequate coverage.

The DWC will allow employers the opportunity to present evidence against an alleged violation of the coverage requirements. Upon evaluating the evidence, the initial penalty may be dismissed or partially abated. The DWC considers the following factors when making an abatement decision:

- The length of time the employer was without adequate coverage;
- Whether a compensable injury occurred while the employer was inadequately covered;
- Whether the employer has a past history of violations (this includes violations made by entities in which the employer was an owner, officer or principal shareholder);
- The employer's good faith efforts;
- The size of the employer's business; and
- Any other material factor.

STOP-WORK ORDERS

Employers are subject to stop-work orders if they knowingly:

- Fail to provide adequate workers' compensation coverage for their employees;
- Misrepresent one or more employees as independent contractors; or
- Provide false, incomplete or misleading information regarding the number of employees.

"Knowingly" means the employer has:

- Previously obtained workers' compensation insurance and the insurance has been cancelled, discontinued or not renewed;
- Been advised of the need for workers' compensation coverage by the DWC or any other governmental agency; or
- Received one or more penalties for violating workers' compensation coverage requirements (including failure to obtain coverage, failure to qualify for self-insurance, misreporting or misrepresenting the number of employees, and misreporting or misrepresenting employees as independent contractors).

Employers that receive a stop-work order typically must cease all business operations until the order expires. This applies to every site affected by the violation. A stop-work order becomes effective upon delivery to the employer and remains effective against any successor firms, corporations or partnerships.

Employers that fail to comply with a stop-work order are subject to a fine of **between \$1,000 and \$5,000** for each day they violate the order.

CRIMINAL CHARGES

An employer may be criminally charged as a **disorderly person**, punishable by a **fine of up to \$1,000, imprisonment for up to six months** or **both** if it is not compliant with the WCA coverage requirements. In addition to failures to provide adequate coverage, infractions that may lead to these charges include:

- Misrepresenting one or more employees as independent contractors; and
- Providing false or misleading information concerning the number of employees.

FAILURE TO PROVIDE EMPLOYER IDENTIFICATION NUMBER

The WCA requires employers to submit their employer identification numbers to their insurance providers. This number is issued by the New Jersey Department of Labor and Workforce Development.

Employers that refuse or fail to provide the number to their insurance providers may be ordered to pay a **\$1,000** penalty for each infraction. The penalty may be waived for employers that can show reasonable cause for not providing this information.

UNREASONABLE OR NEGLIGENT FAILURE TO PAY BENEFITS

Employers may be penalized if they unreasonably or negligently delay or refuse to pay disability benefits to employees who have work-related conditions. The penalty may add **up to an additional 25 percent** of the compensation that was otherwise payable to the employee. Employers may also be required to compensate an employee for any reasonable **legal fees** he or she incurred to collect on any unpaid amount.

The DWC will automatically assume that an employer has unreasonably or negligently delayed or refused to pay temporary disability compensation if the employer has not made any required payments within 30 days of when payment was required by law or court order.

Employers that withhold lawful compensation for **60 days** or more after a judgment or order for compensation is issued may be ordered to pay **simple interest** on the unpaid compensation. The rate of interest is determined by a court. In addition, the DWC may impose a **\$1,000** fine and a penalty equal to **15 percent** of the award if an employer fails to pay benefits as required by a judgment or order.

RETALIATION AND DISCRIMINATION

New Jersey law prohibits employers from discharging or in any other way discriminating against an employee based on the fact that the employee has claimed or attempted to claim workers' compensation benefits. Similarly, employers are prohibited from discriminating against any employee who testifies or is about to testify against the employer in any workers' compensation proceeding.

Employers that discriminate or retaliate against their employees may face a fine of **between \$100 and \$1,000, imprisonment for up to 60 days or both**. In addition, employers may be required to restore a discharged employee to his or her employment and compensate him or her for any loss of wages due to the discrimination or retaliation. An exception may be allowed if the employee is no longer qualified to perform the duties of the position.

Employers cannot pass discrimination or retaliation costs to their insurance providers.

VIOLATION OF RECORDING AND REPORTING REQUIREMENTS

Employers that violate recordkeeping and reporting requirements may be subject to a fine of **between \$10 and \$50** and any other penalty specifically associated with a particular record or report. Specifically, employers may be required to pay a penalty of:

- **\$10** for the first time they fail to submit a report of injury or a final report;
- **\$25** for a second violation; and
- **\$50** for a third and any subsequent violations.

Failure to submit a report includes failures to:

- Use the required electronic filing system;
- Supply required information to another party; and
- Submit a complete and accurate report.

In addition to injury and final reports, the WCA requires employers to maintain a record of the benefits they pay to employees. Employers must periodically submit these reports to the DWC for inspection. Employers that fail to submit a completed report by July 31 of each year may be subject to a **\$100** penalty for each 30-day period the report remains unfiled after July 31, up to a maximum of **\$500**.

WORKERS' COMPENSATION FRAUD

In New Jersey, workers' compensation fraud is a crime in the fourth degree, punishable by a fine of **up to \$10,000, imprisonment for up to 9 months or both**. The WCA defines fraud as purposely or knowingly:

- Making a false or misleading statement, representation or submission regarding a material fact of a workers' compensation claim with the purpose of wrongfully obtaining benefits;
- Misclassifying employees or engaging in a deceptive leasing practice for the purpose of evading the full payment of benefits or insurance premiums; or
- Coercing, soliciting, encouraging (directly or through a third party) any individual to make a false or misleading statement, representation or submission of a material fact related to a claim for benefits or premiums for the purpose of wrongfully obtaining the benefits or evading the full payment of insurance premiums.

In addition to any applicable criminal charges, employers or individuals that wrongfully obtain benefits or evade the full payment of insurance premiums through fraud may face civil penalties, including **damages, reasonable costs and attorney fees**.

FAILURE TO DESIGNATE CONTACT

Employers are required to designate a contact person to be responsible for responding to any issue concerning medical and temporary disability benefits. Employers must provide the DWC with the contact person's full name, telephone number, address, e-mail address and fax number. Employers must also notify the DWC about any changes to the contact person's information. Employers that fail to comply with the contact person requirements may be ordered to pay a **\$2,500** fine for each day of noncompliance.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the DWC [website](#) for more information on workers' compensation laws in New Jersey.

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